

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Wanda Doonan Trust)	File No. EB-03-KC-030
Owner of Antenna Supporting Structure 1203563)	NAL/Acct. No. 200332560018
Great Bend, Kansas)	FRN 0006-1633-98
)	
)	

FORFEITURE ORDER

Adopted: August 4, 2004

Released: August 6, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand dollars (\$1,000) to Wanda Doonan Trust, owner of antenna structure number 1203563 in Great Bend, Kansas, for willful violation of Section 17.50 of the Commission’s Rules (“*Rules*”).¹ The noted violation involves Wanda Doonan Trust’s failure to repaint the antenna structure as often as necessary to maintain good visibility.

2. On March 3, 2003, the Commission’s Kansas City, Missouri District Office (“*Kansas City Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Wanda Doonan Trust for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.50 of the Rules.² Wanda Doonan Trust filed a response to the *NAL* on March 24, 2003 and supplemented its response on April 10, 2003.

II. BACKGROUND

3. On February 12, 2003, the antenna structure located at or near geographic coordinates 38° 22’ 42”N / 098° 45’ 52”W in Great Bend, Kansas, was inspected by an agent of the Kansas City Office. The Commission’s antenna structure registration (“*ASR*”) database showed this structure (antenna structure number 1203563) was registered to Wanda Doonan Trust and that the tower required marking and lighting. At the time of the inspection the paint on the tower was badly faded and peeling, resulting in poor visibility of the structure. On February 24, 2003, the agent interviewed an employee of Doonan Trucking, who stated the tower was leased to a communications company that was entirely responsible for all tower painting and lighting.

¹ 47 C.F.R. §§ 17.50.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332560018 (Enf. Bur., Kansas City Office, released March 3, 2003).

4. On March 3, 2003, the Kansas City Office issued the subject *NAL* for a \$10,000 forfeiture to Wanda Doonan Trust for failing to maintain good visibility of the antenna structure in willful and repeated violation of Section 17.50 of the Rules. In its response to the *NAL*, Wanda Doonan Trust does not dispute that its tower was poorly painted on February 12, 2003, resulting in poor visibility of the structure. However, Wanda Doonan Trust states that the *NAL* was issued less than 30 days after the inspection, that it is “attempting to comply” with Commission Rules and “denies its action to have been willful and repeated.” Wanda Doonan Trust also provides copies of its tax returns for 1999, 2000 and 2001 because the “Trust has very limited assets”, and requests cancellation of the forfeiture, implying that it cannot afford to pay the proposed \$10,000 forfeiture. Finally, it supplements its response stating that it will paint the tower on or about April 15, 2003.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining Wanda Doonan Trust’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

6. Section 17.50 of the Rules requires that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. Wanda Doonan Trust is the registered owner of antenna structure number 1203563, and is responsible for maintaining the structure’s marking.⁶ The ASR for this structure requires that the structure be painted. Wanda Doonan Trust does not dispute that over a period of time, it failed to clean or repaint the antenna structure as often as necessary to maintain good visibility of the antenna structure markings. Accordingly, we conclude that Wanda Doonan Trust willfully⁷ and repeatedly⁸ violated Section 17.50 of the Rules.⁹

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ See 47 C.F.R. § 17.6(a).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁸ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

7. Further, Wanda Doonan Trust's efforts to "attempt to comply" with the Rules and remedial efforts to correct the violation after the FCC inspection are not mitigating factors warranting cancellation of the proposed forfeiture.¹⁰ It is well established that "corrective action to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹¹ However, Wanda Doonan Trust provides its tax returns for 1999, 2000 and 2001 in support of its claimed inability to pay the proposed forfeiture. The Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay a forfeiture.¹² After considering the financial documentation submitted by Wanda Doonan Trust, we conclude that reduction of the forfeiture amount to \$1,000 is appropriate.

8. We have examined Wanda Doonan Trust's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Wanda Doonan Trust willfully violated Section 17.50 of the Rules, but we reduce the forfeiture proposed for this violation from \$10,000 to \$1,000.¹³

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Wanda Doonan Trust **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand dollars (\$1,000) for repeated violation of Section 17.50 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482,

⁹ Contrary to Wanda Doonan Trust's response, the fact that the *NAL* was issued less than 30 days after the inspection by the Kansas City Office and Wanda Doonan Trust's efforts to comply with Commission Rules are not dispositive as to whether its actions are "willful" or "repeated" under the Communications Act or Commission Rules. Our conclusion that the violations were willful and repeated is based on our findings at the time of the inspection. Therefore, Wanda Doonan Trust's post-inspection compliance efforts and the timing of the issuance of the *NAL* have no bearing on whether its actions are willful or repeated.

¹⁰ See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

¹¹ *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

¹² See *Long Distance Direct, Inc.*, 15 FCC Rcd 3297, 3305 (2000); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1991).

¹³ See *WGFS, Inc.*, 18 FCC Rcd 11332 (Enf. Bur. 2003).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332560018 and FRN 0006-1633-98. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Wanda Doonan Trust, c/o Mr. Steve Dillinger, Doonan Truck and Equipment Inc., Hwy 56 & 156 Jct., Great Bend, KS. 67530, and to its counsel, Hugh D. Mauch, Jackson Square Office Building, 1027 Jackson, P.O. Box 1444, Great Bend, Kansas, 67530-1444.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.